

## Environmental Protection Agency

## § 22.8

confidential shall be filed with the Regional Hearing Clerk:

(i) One version of the document shall contain the information claimed confidential. The cover page shall include the information required under paragraph (c)(2) of this section and the words "Business Confidentiality Asserted". The specific portion(s) alleged to be confidential shall be clearly identified within the document.

(ii) A second version of the document shall contain all information except the specific information claimed confidential, which shall be redacted and replaced with notes indicating the nature of the information redacted. The cover page shall state that information claimed confidential has been deleted and that a complete copy of the document containing the information claimed confidential has been filed with the Regional Hearing Clerk.

(3) Both versions of the document shall be served on the Presiding Officer and the complainant. Both versions of the document shall be served on any party, non-party participant, or representative thereof, authorized to receive the information claimed confidential by the person making the claim of confidentiality. Only the redacted version shall be served on persons not authorized to receive the confidential information.

(4) Only the second, redacted version shall be treated as public information. An EPA officer or employee may disclose information claimed confidential in accordance with paragraph (d)(1) of this section only as authorized under 40 CFR part 2.

### § 22.6 Filing and service of rulings, orders and decisions.

All rulings, orders, decisions, and other documents issued by the Regional Administrator or Presiding Officer shall be filed with the Regional Hearing Clerk. All such documents issued by the Environmental Appeals Board shall be filed with the Clerk of the Board. Copies of such rulings, orders, decisions or other documents shall be served personally, by first class mail (including by certified mail or return receipt requested, Overnight Express and Priority Mail), by EPA's internal mail, or any reliable commer-

cial delivery service, upon all parties by the Clerk of the Environmental Appeals Board, the Office of Administrative Law Judges or the Regional Hearing Clerk, as appropriate.

### § 22.7 Computation and extension of time.

(a) *Computation.* In computing any period of time prescribed or allowed in these Consolidated Rules of Practice, except as otherwise provided, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal holidays shall be included. When a stated time expires on a Saturday, Sunday or Federal holiday, the stated time period shall be extended to include the next business day.

(b) *Extensions of time.* The Environmental Appeals Board or the Presiding Officer may grant an extension of time for filing any document: upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties; or upon its own initiative. Any motion for an extension of time shall be filed sufficiently in advance of the due date so as to allow other parties reasonable opportunity to respond and to allow the Presiding Officer or Environmental Appeals Board reasonable opportunity to issue an order.

(c) *Service by mail or commercial delivery service.* Service of the complaint is complete when the return receipt is signed. Service of all other documents is complete upon mailing or when placed in the custody of a reliable commercial delivery service. Where a document is served by first class mail or commercial delivery service, but not by overnight or same-day delivery, 5 days shall be added to the time allowed by these Consolidated Rules of Practice for the filing of a responsive document.

### § 22.8 Ex parte discussion of proceeding.

At no time after the issuance of the complaint shall the Administrator, the members of the Environmental Appeals Board, the Regional Administrator, the Presiding Officer or any other person who is likely to advise these officials

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on any decision in the proceeding, discuss *ex parte* the merits of the proceeding with any interested person outside the Agency, with any Agency staff member who performs a prosecutorial or investigative function in such proceeding, or with any representative of such person. Any *ex parte* memorandum or other communication addressed to the Administrator, the Regional Administrator, the Environmental Appeals Board, or the Presiding Officer during the pendency of the proceeding and relating to the merits thereof, by or on behalf of any party shall be regarded as argument made in the proceeding and shall be served upon all other parties. The other parties shall be given an opportunity to reply to such memorandum or communication. The requirements of this section shall not apply to any person who has formally recused himself from all adjudicatory functions in a proceeding, or who issues final orders only pursuant to § 22.18(b)(3).

### § 22.9 Examination of documents filed.

(a) Subject to the provisions of law restricting the public disclosure of confidential information, any person may, during Agency business hours inspect and copy any document filed in any proceeding. Such documents shall be made available by the Regional Hearing Clerk, the Hearing Clerk, or the Clerk of the Board, as appropriate.

(b) The cost of duplicating documents shall be borne by the person seeking copies of such documents. The Agency may waive this cost in its discretion.

## Subpart B—Parties and Appearances

### § 22.10 Appearances.

Any party may appear in person or by counsel or other representative. A partner may appear on behalf of a partnership and an officer may appear on behalf of a corporation. Persons who appear as counsel or other representative must conform to the standards of conduct and ethics required of practitioners before the courts of the United States.

## 40 CFR Ch. I (7–1–01 Edition)

### § 22.11 Intervention and non-party briefs.

(a) *Intervention.* Any person desiring to become a party to a proceeding may move for leave to intervene. A motion for leave to intervene that is filed after the exchange of information pursuant to § 22.19(a) shall not be granted unless the movant shows good cause for its failure to file before such exchange of information. All requirements of these Consolidated Rules of Practice shall apply to a motion for leave to intervene as if the movant were a party. The Presiding Officer shall grant leave to intervene in all or part of the proceeding if: the movant claims an interest relating to the cause of action; a final order may as a practical matter impair the movant's ability to protect that interest; and the movant's interest is not adequately represented by existing parties. The intervenor shall be bound by any agreements, arrangements and other matters previously made in the proceeding unless otherwise ordered by the Presiding Officer or the Environmental Appeals Board for good cause.

(b) *Non-party briefs.* Any person who is not a party to a proceeding may move for leave to file a non-party brief. The motion shall identify the interest of the applicant and shall explain the relevance of the brief to the proceeding. All requirements of these Consolidated Rules of Practice shall apply to the motion as if the movant were a party. If the motion is granted, the Presiding Officer or Environmental Appeals Board shall issue an order setting the time for filing such brief. Any party to the proceeding may file a response to a non-party brief within 15 days after service of the non-party brief.

### § 22.12 Consolidation and severance.

(a) *Consolidation.* The Presiding Officer or the Environmental Appeals Board may consolidate any or all matters at issue in two or more proceedings subject to these Consolidated Rules of Practice where: there exist common parties or common questions of fact or law; consolidation would expedite and simplify consideration of the issues; and consolidation would not adversely affect the rights of parties